

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**NOTICE OF APPEARANCE AND  
VERIFIED ANSWER**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X

S I R S:

**PLEASE TAKE NOTICE**, that the Defendant, **ANTHONY J. PRIMIANO**, hereby  
appears in this action by his attorneys, **BURATTI, KAPLAN, MCCARTHY & MCCARTHY**,  
and interposes the following Notice of Appearance and Verified Answer to the Plaintiff's  
Complaint as follows:

**ANSWERING THE FIRST CAUSE OF ACTION**

The Defendant denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered: "1", "2", "3", "4", "5", "7", "8", "9", "10", "11"  
and "15" of the complaint.

The Defendant denies upon information and belief the allegations contained in  
Paragraphs numbered: "12", "13", "14" and "16" of the complaint.

**ANSWERING THE SECOND CAUSE OF ACTION**

The Defendant(s) repeat, reiterate and reallege each and every answer to each and  
every allegation set forth above in Paragraph numbered: "17".

The Defendant(s) deny upon information and belief the allegations contained in Paragraphs numbered: "18", "19", "20", "21" and "22".

**ANSWERING THE THIRD CAUSE OF ACTION**

The Defendant(s) repeat, reiterate and reallege each and every answer to each and every allegation set forth above in Paragraph numbered: "23".

The Defendant(s) deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs numbered: "27".

The Defendant(s) deny upon information and belief the allegations contained in Paragraphs numbered: "24", "25", "26" and "28".

**ANSWERING THE FOURTH CAUSE OF ACTION**

The Defendant(s) repeat, reiterate and reallege each and every answer to each and every allegation set forth above in Paragraph numbered: "29".

The Defendant(s) deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs numbered: "33".

The Defendant(s) deny upon information and belief the allegations contained in Paragraphs numbered: "30", "31", "32" and "34".

**ANSWERING THE FIFTH CAUSE OF ACTION**

The Defendant(s) repeat, reiterate and reallege each and every answer to each and every allegation set forth above in Paragraph numbered: "35".

The Defendant(s) deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs numbered: "39".

The Defendant(s) deny upon information and belief the allegations contained in Paragraphs numbered: "36", "37", "38" and "40".

**ANSWERING THE SIXTH CAUSE OF ACTION**

The Defendant(s) repeat, reiterate and reallege each and every answer to each and every allegation set forth above in Paragraph numbered: "41".

The Defendant(s) deny upon information and belief the allegations contained in Paragraphs numbered: "42" and "43".

**AS AND FOR A FIRST SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THIS DEFENDANT  
RESPECTFULLY SETS FORTH AND ALLEGE UPON  
INFORMATION AND BELIEF:**

That any verdict in the within action, for past, present and future medical care, dental care, custodial care, or rehabilitation services, loss of earnings or other economic loss, should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part from any collateral source, in accordance with the provisions and limitations of Section 4545(c) of the New York State CPLR.

**AS AND FOR A SECOND SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THIS DEFENDANT  
RESPECTFULLY SETS FORTH AND ALLEGES UPON  
INFORMATION AND BELIEF:**

Plaintiff has failed to sustain a serious physical injury as defined by Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A THIRD SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THE DEFENDANT  
RESPECTFULLY SETS FORTH AND ALLEGES UPON  
INFORMATION AND BELIEF:**

Plaintiff is limited to recovery for basic economic loss as provided for by the no-fault provisions of Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A FOURTH SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THE DEFENDANT  
RESPECTFULLY SETS FORTH AND ALLEGES UPON  
INFORMATION AND BELIEF:**

Any damages sustained by the Plaintiff was caused by the culpable conduct of the Plaintiff, including contributory negligence or assumption of risk, and not by the culpable conduct or negligence of these answering Defendants.

**AS AND FOR A FIFTH SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THE DEFENDANT  
RESPECTFULLY SETS FORTH AND ALLEGES UPON  
INFORMATION AND BELIEF:**

Upon information and belief, Plaintiff failed to use or misused available seat belts, and thereby contributed to the alleged injuries.

**AS AND FOR A SIXTH SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THIS DEFENDANT  
RESPECTFULLY SETS FORTH AND ALLEGES UPON  
INFORMATION AND BELIEF:**

That the Defendant was confronted by an emergency situation.

**AS AND FOR A COUNTERCLAIM AGAINST  
THE PLAINTIFF, JOSE L. MARTINEZ, BY DEFENDANT, ANTHONY J. PRIMIANO,  
RESPECTFULLY ALLEGE(S):**

That if the plaintiffs, **MARIA MUNGUIA, INDIVIDUALLY AND AS APRENTS AND  
NATURAL GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14  
YEARS, XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE AND CHRISTIAN  
MUNGUIA**, were caused to sustain injuries and damages at the time and place set forth in the Complaint through any carelessness and negligence other than his own, then said injuries and damages were sustained by the reason of the primary carelessness and



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**ATTORNEY VERIFICATION**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X  
STATE OF NEW YORK        }  
                                  } SS:  
COUNTY OF WESTCHESTER }

**JEFFREY DOMOTO, ESQ.** says that: I am the attorney of record, or of counsel with the attorney(s) of record, for **DEFENDANT, ANTHONY J. PRIMIANO**. I have read the annexed **NOTICE OF APPEARANCE AND VERIFIED ANSWER, DEMAND FOR INTERROGATORIES, DEMAND FOR INFORMATION, DEMAND FOR WITNESSES, DEMAND FOR COLLATERAL SOURCE INFORMATION, NOTICE TO TAKE DEPOSITION AND NOTICE FOR DISCOVERY & INSPECTION**, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of Defendant is that the Defendant does not presently reside in the County where your deponent has an office.

That the sources of your deponent's information and the grounds of my belief as to the matters so alleged herein are investigations had by the Defendant, their agents, servants and representatives into the subject matter hereof and correspondence relating thereto, reports of which investigations and copies, of which correspondence are in the possession of your deponent.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: Yonkers, New York  
October 15, 2007

\_\_\_\_\_  
**JEFFREY A. DOMOTO, ESQ.**

STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF WESTCHESTER        )

**RENEE M. MILSTEIN**, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides in Westchester County.

On October 15, 2007, deponent served the within **NOTICE OF APPEARANCE AND VERIFIED ANSWER, DEMAND FOR INTERROGATORIES, DEMAND FOR INFORMATION, DEMAND FOR WITNESSES, DEMAND FOR COLLATERAL SOURCE INFORMATION, NOTICE TO TAKE DEPOSITION AND NOTICE FOR DISCOVERY & INSPECTION**, upon the following attorneys in this action, at the addresses indicted below, which addresses have been designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

TO: **MAX D. LEIFER, P.C.**  
628 Broadway, Suite 300  
New York, New York 10012

  
**RENEE M. MILSTEIN**

Sworn to before me on  
October 15, 2007

**JEFFREY A. DOMOTO**  
Notary Public, State of New York  
**No. 02DO6108448**  
Qualified in Putnam County  
Commission Expires **April 19, 2008**

Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**NOTICE OF APPEARANCE AND VERIFIED ANSWER**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....

Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within  
admitted.

is hereby

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named

NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.

SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY**  
**& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**DEMAND FOR  
INTERROGATORIES**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X

S I R S:

**PLEASE TAKE NOTICE**, that the Defendant requires of the plaintiffs answers under oath to the following interrogatories, pursuant to and within the time prescribed by Rule 33 of the Federal Rules of Civil Procedure.

**INSTRUCTIONS FOR USE**

A. All information is to be divulged which is in the possession of the individual, his attorneys, investigators, agents, employees or otherwise representative of the named party/parties and his/her attorney.

B. Where an individual interrogatory calls for an answer, which involves more than one part, each part of the answer, which involves more than one part, should be clearly set out so that it is understandable.

C. These interrogatories are intended as continuing interrogatories requiring you to answer by supplemental answer, setting forth any information within the scope of the interrogatories which may be required by the defendants, their agents, attorneys or representative following the original answer.

1. State the approximate time of day that the alleged accident occurred, giving the day, month, year and approximate hour thereof;
2. State the approximate place and location including the state where the alleged accident occurred showing on what street or road, with the name thereof, if it occurred at intersecting streets, the names thereof and the particular part of the intersection; if it occurred between intersecting streets, the names thereof and the distance from the intersection;
3. State what the general direction and on what street or road, with the name thereof, that it is claimed defendant's motor vehicle, in which plaintiff was a passenger, was proceeding at the time;
4. Set forth a general statement of the acts of negligence on the part of the defendant of which plaintiff complains;
5. Set forth the nature, location, extent and duration of each and every injury claimed to have been sustained as a result of the alleged accident;
6. (a) Set forth which of the above injuries plaintiff will claim are "serious injuries" within the scope, definition and meaning of Section 5102 of the Insurance Law, and  
  
(b) Specify in what manner plaintiff will claim that the injuries are "serious injuries".
7. State the age of the plaintiff at the time of the alleged accident, the length of time, if any, plaintiff was:
  - (a) confined to a hospital;
  - (b) confined to home;
  - (c) confined to bed;
  - (d) received medical care and attention, hospitalization, etc.
8. State the amounts of money expended by plaintiff for medical care and attention, hospitalization, etc.;
9. State in what respect plaintiff has sustained serious injuries or suffered economic loss greater than the basic loss as defined under Section 5102 of the New York State Insurance Law;

10. State the nature of the usual occupation or vocation of the plaintiff at the time of the alleged accident; the amount of salary or income which she received therefrom; the length of time she was unable to pursue her usual occupation or vocation, and amount of salary or income which she lost by reason thereof;
11. State the name and address of plaintiff's employers and attach hereto authorizations to secure employment records from all of the plaintiff's employers during the calendar year of the occurrence up to and including the present;
12. Set forth the particular provision of the rules, regulations, statutes and ordinances of the State of New York with the title article and section numbers thereof which it is claimed the plaintiff violated;
13. List those attorneys who have appeared in this action, together with their addresses and the name of the party for whom such attorney has appeared;
14. State whether any statements were given by or on behalf of the answering of the third-party defendant serving this notice, and attach hereto a copy, of any and all statements;
15. State the names and addresses of all those physicians who have previously examined and/or treated the party seeking recovery for the conditions claimed in this lawsuit and attach hereto copies of the medical reports of those physicians. These shall include a detailed recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those x-ray and technicians reports which will be offered at the trial;
16. State the names and addresses of those physicians who will testify on behalf of the party seeking recovery and attach hereto copies of the medical reports of those physicians. These shall include a detailed recital of the injuries and conditions as to which testimony will be offered at the trial referring to and identifying those x-ray and technicians reports which will be offered at the trial;
17. Attach hereto duly executed and acknowledged written authorizations permitting all parties to obtain and make copies of all medical records and hospital records, and such other records including x-ray and technicians reports as may be referred to and identified in the statement of the examined party's physicians;
18. Attach hereto a copy of the written report of the subject accident prepared by any adverse party for submission and filing with the

State of New York Department of Motor Vehicles, commonly known as an MV-104;

19. Attach hereto all photographs under the control of adverse parties or the attorney or representative of the adverse parties showing the condition of the accident site to be alleged to represent said site as of the time of the occurrence and intended to be introduced at the trial for that purpose;
20. Attach hereto all photographs taken of the vehicle of any adverse party showing the extent of damage, if any, to the adverse party vehicle following the accident herein;
21. Attach hereto plaintiff's income tax returns for the calendar year of the occurrence and two preceding calendar years;
22. State the name and address of any school attended by the plaintiff during the calendar year of the occurrence, and the calendar year subsequent to the occurrence up to and including the present; and attach hereto authorizations to secure the school records of any of the aforementioned schools attended by the plaintiff during the periods specified;
23. State names and the addresses of all persons claimed by parties you represent herein to have either witnessed the occurrence or to have firsthand knowledge of same, or to have notice of the condition proximately causing this occurrence, or having firsthand knowledge of the facts and circumstances regarding this occurrence whether by the parties you represent at the scene of the occurrence or thereafter obtained by their attorney or representative. If no such persons are known to said parties or their representative, so state in reply to this demand. The third-party defendant will object at time of trial of this action to the testimony of any person not so identified;
24. If the parties you represent or their representatives obtain names and addresses of persons who witnessed the occurrence or have firsthand knowledge of same subsequent to the service of this notice, such information is to be furnished to the third-party defendant whenever so obtained. The third-party defendant will object at the time of trial of this action to the testimony of any person not so identified;

Dated: Yonkers, New York  
October 15, 2007

Yours etc.,  
**BURATTI, KARLAN, MCCARTHY  
& MCCARTHY**

By: \_\_\_\_\_  
**JEFFREY A. DOMOTO (JAD 9273)**  
Attorney for Defendant  
One Executive Blvd., Suite 280  
Yonkers, NY 10701  
(914) 378-3900  
Our File No.: 21951

TO: **MAX D. LEIFER P.C.**  
Attorneys for Plaintiffs  
628 Broadway – Suite 300  
New York, New York 10012  
(212) 334-9699

Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**DEMAND FOR INTERROGATORIES**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....  
Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within is hereby  
admitted.

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named

NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.

SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY**  
**& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**DEMAND FOR INFORMATION**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X

**S I R S :**

**PLEASE TAKE NOTICE** that you are hereby required to serve upon and deliver  
to the undersigned, the following:

1. Pursuant to Rule 34 of the Federal Rules, a list of those attorneys who have appeared in this action, together with their addresses and the name of the party for who such attorney has appeared.
2. Pursuant to Rule 34 of the Federal Rules, a copy of any statement given by or on behalf of any answering Defendant serving this notice.
3. Copies of the medical reports of those physicians who have previously treated or examined the party seeking recovery for the conditions claimed in this lawsuit. These shall include a detailed recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those X-Rays and technicians' reports which will be offered at the trial.
4. Copies of the medical reports of those physicians who will testify on behalf of the part(y)(ies) seeking recovery. These shall include a detailed recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those X-Ray and technicians' reports, which will be offered at the trial.
5. A copy of the written report of the subject accident prepared by any adverse party for submission and filing with the State of New York Department of Motor Vehicles, commonly known as an MV104.

6. All photographs under the control of adverse part(y)(ies) or the attorneys or representative of the adverse part(y)(ies) showing the conditions of the accident site to be alleged to represent said site as of the time of the occurrence and intended to be introduced at the trial for the purpose.
7. Photographs taken of the vehicle(s) of any adverse party showing the extent of damage, if any, to the adverse part(y)(ies) vehicle(s) following the accident herein.
8. Photographs taken of the Plaintiff(s) following the accident herein.
9. Plaintiff('s') income tax returns for the calendar year of the occurrence and the two preceding calendar years.
10. The name and address of Plaintiff('s') employers and authorizations to secure employment records from all of the Plaintiff('s') employers during the calendar year of the occurrence up to and including the present.
11. Duly executed and acknowledge written authorizations permitting all parties to obtain and make copies of all hospital records, and such other medical records including X-Ray and Technician's reports as may be referred to and identified in the statement of the examined party('s') physicians.
12. The name and address of any school attended by the Plaintiff(s) during the calendar year of the occurrence, and the calendar years subsequent to the occurrence up to and including the present; and authorizations to secure the school records of any of the aforementioned schools attended by the Plaintiff(s) during the periods so specified.
13. Duly executed and acknowledged written authorization permitting all parties to obtain and make copies of the Plaintiff('s') no-fault file.
14. The name and address of each and every person whom you expect to call as an expert witness at trial.
15. Set forth the qualifications of each such expert witness.
16. Set forth in reasonable detail the subject matter on which each such expert is expected to testify.
17. Set forth the substance of the facts and opinions on which each such expert is expected to testify, and a summary of the grounds for each expert's opinion.
18. Provide a copy of the receipt for the purchase of the index number.



Dated: Yonkers, New York  
October 15, 2007

Yours, etc.

**BURATTI, KAPLAN, MCCARTHY  
& MCCARTHY**

By: \_\_\_\_\_

**JEFFREY A. DOMOTO (JAD9273)**

Attorneys for Defendant  
One Executive Boulevard, Suite 280  
Yonkers, N.Y. 10701  
(914) 378-3900  
Our File No.: 21951

TO: **MAX D. LEIFER, P.C.**  
Attorneys for Plaintiffs  
628 Broadway, Suite 300  
New York, New York 10012  
(212) 334-9699

Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**DEMAND FOR INFORMATION**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....  
Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within  
admitted.

is hereby

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named  
NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.  
SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY  
& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**DEMAND FOR WITNESSES**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X  
**S I R S:**

**PLEASE TAKE NOTICE**, that pursuant to Rules 26 and 34 of the Federal Rules,  
the defendant demands that you produce and permit discovery by her attorneys or  
another acting on her behalf the following:

Names and addresses of all persons claimed by parties you represent  
herein to have either witnessed the occurrence or to have firsthand  
knowledge of same, or to have notice of the conditions proximately  
causing this occurrence, or having firsthand knowledge of facts and  
circumstances regarding this occurrence whether by the parties you  
represent at the scene of the occurrence or thereafter obtained by said  
attorneys or representatives. If no such persons are known to said parties  
or representatives, so state in reply to this demand. The defendant(s) will  
object at time of trial of this action to the testimony of any person not so  
identified.

**PLEASE TAKE FURTHER NOTICE**, that if the part(y)(ies) you represent obtain  
names and addresses of persons who witnessed the occurrence or have firsthand  
knowledge of same, subsequent to the service of this notice, such information is to be  
furnished to the defendant(s) whenever so obtained. The defendant(s) will object at the  
time of trial of this action to the testimony of any person not so identified.

**PLEASE TAKE NOTICE**, that said discovery is to take place on November 15, 2007 at the offices of the undersigned, or a written communication enclosing the aforerequested information may be sent prior to the above mentioned time in lieu of a personal appearance on that date.

Dated: Yonkers, New York  
October 15, 2007

Yours, etc.

**BURATTI, KAPLAN, MCCARTHY  
& MCCARTHY** ✓

By: \_\_\_\_\_  
**JEFFREY A. DOMOTO (JAD9273)**  
Attorneys for Defendant  
One Executive Boulevard, Suite 280  
Yonkers, N.Y. 10701  
(914) 378-3900  
Our File No.: 21951

TO: **MAX D. LEIFER, P.C.**  
Attorneys for Plaintiffs  
628 Broadway, Suite 300  
New York, New York 10012  
(212) 334-9699

Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**DEMAND FOR WITNESSES**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....  
Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within is hereby  
admitted.

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named

NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.

SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY**  
**& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**DEMAND FOR COLLATERAL  
SOURCE INFORMATION**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X

**S I R S :**

**PLEASE TAKE NOTICE**, that you are hereby required to furnish to the undersigned within twenty (20) days hereof pursuant to Rule 34 of the Federal Rules, all documents, bills, invoices, receipts or cancelled checks concerning indemnification, payment and/or reimbursements, in whole or in part, which Plaintiff(s) has/have received from collateral sources, including but not limited to insurance, social security, workers compensation or employee benefit programs for the cost of medical care, custodial care, rehabilitation services, loss of earnings and other economic loss which the Plaintiff(s) will claim as special damages in this action.

**PLEASE TAKE FURTHER NOTICE**, that failure to comply with the above mentioned request will render the Plaintiff(s) subject to available provisions provided under the CPLR.



Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**DEMAND FOR COLLATERAL SOURCE INFORMATION**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....  
Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within is hereby  
admitted.

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named  
NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.  
SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY**  
**& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**NOTICE TO TAKE DEPOSITION**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X  
**S I R S :**

**PLEASE TAKE NOTICE**, that pursuant to Article 31 of the Civil Practice Law and Rules, the testimony, upon oral examination of **all adverse parties** to be taken before a Notary Public who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein at: **BURATTI, KAPLAN, MCCARTHY & MCCARTHY**, One Executive Blvd., Suite 280, Yonkers, New York 10701, January 11, 1008 at 10:00 o'clock in the forenoon of that day with respect to evidence and material necessary in the defense of this action:

All of the relevant facts and circumstances in connection with the accident which occurred on September 3, 2004, including negligence, contributory negligence, liability and damages.

That the said person to be examined is required to produce at such examination the following:

**ANY AND ALL RELEVANT DOCUMENTS  
INCLUDING ACCIDENT REPORTS,**

**MEMORANDUMS, BOOKS, RECORDS AND  
PHOTOGRAPHS RELATING TO SAID  
ACCIDENT**

Dated: Yonkers, New York  
October 15, 2007

**BURATTI, KAPLAN, MCCARTHY  
& MCCARTHY**

By: JEFFREY A. DOMOTO (JAD9273)  
Attorneys for Defendant  
One Executive Boulevard, Suite 280  
Yonkers, N.Y. 10701  
(914) 378-3900  
Our File No.: 21951

TO: **MAX D. LEIFER, P.C.**  
Attorneys for Plaintiffs  
628 Broadway, Suite 300  
New York, New York 10012  
(212) 334-9699

Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**NOTICE TO TAKE DEPOSITION**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....  
Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within is hereby  
admitted.

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named

NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.

SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY**  
**& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 07 CIV 7732

JOSE L. MARTINEZ, MARIA MUNGUIA,  
individually, and as parents and natural guardians  
of REBECCA MUNGUIA, an infant under the age  
of 14 years, XOCHILT MUNGUIA, an infant who  
is 14 years of age, and CHRISTIAN MUNGUIA,

Plaintiffs,

**NOTICE FOR DISCOVERY  
AND INSPECTION**

-against-

ANTHONY J. PRIMIANO,

**JUDGE BRIEANT**

Defendant.

-----X

**S I R S :**

**PLEASE TAKE NOTICE**, that pursuant to Rule 34 of the Federal Rules, the Defendant demands that you produce and permit discovery by **BURATTI, KAPLAN, MCCARTHY & MCCARTHY**, or another acting on her behalf, of the following items for inspection, photographing or copying.

1. Pursuant to Rule 34 of the Federal Rules, a copy of any statement given by or on behalf of the Defendant(s).
2. Any and all photographs showing damage to all vehicle(s) involved in the accident.

**PLEASE TAKE FURTHER NOTICE**, that said discovery and inspection is to take place on **November 15, 2007**, at the offices of the undersigned, or a written communication enclosing the information requested herein may be sent prior to the above mentioned time in lieu of a personal appearance on the above date.

Dated: Yonkers, New York  
October 15, 2007

**BURATTI, KAPLAN, MCCARTHY  
& MCCARTHY**

By: JEFFREY A. DOMOTO (JAD9273)

Attorneys for Defendant  
One Executive Boulevard, Suite 280  
Yonkers, N.Y. 10701  
(914) 378-3900  
Our File No.: 21951

TO: **MAX D. LEIFER, P.C.**  
Attorneys for Plaintiffs  
628 Broadway, Suite 300  
New York, New York 10012  
(212) 334-9699

Civil No.: 07 CIV 7732  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE L. MARTINEZ, MARIA MUNGUIA, INDIVIDUALLY, AND AS PARENTS AND NATURAL  
GUARDIANS OF REBECCA MUNGUIA, AN INFANT UNDER THE AGE OF 14 YEARS,  
XOCHILT MUNGUIA, AN INFANT WHO IS 14 YEARS OF AGE, AND CHRISTIAN MUNGUIA,

Plaintiff(s),

- against -

ANTHONY J. PRIMIANO,

Defendant(s).

---

**NOTICE FOR DISCOVERY AND INSPECTION**

---

**BURATTI, KAPLAN, MCCARTHY & MCCARTHY**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**ATTORNEYS FOR DEFENDANT(S) – KAWANA BRICKHOUSE**  
**ONE EXECUTIVE BOULEVARD, SUITE 280**  
**YONKERS, NEW YORK 10701**  
**(914) 378-3900**

---

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: October 15, 2007

Signature.....  
Print Signer's Name: **JEFFREY A. DOMOTO, ESQ.**

---

Service of a copy of the within  
admitted.

is hereby

Dated:

.....  
Attorney(s) for

---

**PLEASE TAKE NOTICE**

[ ] that the within is a (certified) true copy of a entered in the office of the clerk of  
the within named

NOTICE OF Court on , 200 .  
ENTRY

[ ] that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF , one of the judges of the within named Court, on , 200 , at  
.m.

SETTLEMENT

Dated: Yonkers, New York

**BURATTI, KAPLAN, MCCARTHY**  
**& MCCARTHY**  
Attorneys for Defendant(s)  
One Executive Boulevard, Suite 280  
Yonkers, New York 10701  
(914) 378-3900

To:

Attorney(s) for